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No. 95-512

Supreme Court, U.S.
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CLERK

In The

Supreme Court of the United States

October Term, 1995

JEANIE M. BOYETTE,

Petitioner,

vs.

AMERICAN INTERNATIONAL ADJUSTMENT COMPANY, INC. and AMERICAN INTERNATIONAL GROUP, INC.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Respondent American International Group, Inc. ("AIG") has publicly traded shares. Although AIG has a number of parent companies, subsidiaries and affiliates, the only one which has issued shares to the public other than AIG itself, is Transatlantic Holdings, Inc.

Respondent American International Adjustment Company, Inc. ("AIAC") has no publicly traded shares. AIG is AIAC's parent company, so AIAC's answer is the same as AIG's. Further, AIAC states that effective April 7, 1994, it formally changed its name to AIG Claim Services, Inc.

REASONS FOR DENYING THE WRIT

The petition for certiorari should be denied because none of Petitioner's four issues presents an important federal question requiring this Court's attention, and because arguments she attempts to raise in this Court either were waived below or are not adequately presented in the record of this case.

1. Petitioner, who was plaintiff below, wants to change Georgia common law. She is dissatisfied with the limited remedies Congress provided for violation of a federal discrimination statute (ADEA), and believes Georgia should expand those remedies by imposing common law tort liability for negligent violations of ADEA. Her theory that the Supremacy Clause requires Georgia to do so is absurd. The Supremacy Clause requires states to recognize federal statutory actions, but does not dictate that states must create parallel tort claims under their own common law. The cases Petitioner cites do not support her far more extreme interpretation. *E.g.*, *Mondou v. New York*, 223 U.S. 1, 57 (1911) (a state court, when asked to exercise its concurrent jurisdiction over a federal claim, cannot refuse to recognize that claim based on its view that the federal statute is repugnant to the state's public policy).

Further, the supposed Supremacy Clause issue is not presented by the present record. *First,* even if Georgia courts must treat ADEA identically to state statutes enacted by the Georgia General Assembly, they still would not recognize Petitioner's tort claim for negligent violations of ADEA. *See Borden v. Johnson*, 196 Ga. App. 288, 395 S.E. 2d 628 (1990) (a party injured by violation of any state discrimination statute is limited to whatever remedies the statute provides — the at-will doctrine prohibits Georgia common law from providing additional tort remedies). *Second,* Petitioner never raised a Supremacy Clause issue until oral argument in the appellate court, so it was waived.

2. The District Court awarded costs to Respondent after it set aside the jury's verdict and entered judgment for Respondent under Rule 50(b). Petitioner attacks this award as an abuse of discretion, insisting that she "prevailed," even though she obtained absolutely no legal or equitable relief, because her unsuccessful lawsuit was a "catalyst" that somehow might have benefited other employees. Her view stretches the "prevailing party" concept beyond recognition. It is one thing to say that when there is no judgment for either party, the plaintiff "prevailed" if she was a catalyst for change (*e.g.*, due to a settlement), but quite another to attach the label of "winner" to someone such as Petitioner, who suffered an adverse judgment and formally *lost*. At any rate, Petitioner never raised a "catalyst" theory in the District Court or the Court of Appeals, so it was waived.

3. Petitioner complains that the District Court abused its discretion when it denied her motion to amend the Complaint and add an additional tort claim, after discovery had closed. The issues she raises — the supposed justification for her delay and whether Respondent would have been prejudiced — affect no one beyond the present litigants, and were fully and correctly reviewed by the Court of Appeals.

4. Petitioner asserts that the District Court abused its discretion by imposing a discovery sanction: it excluded evidence regarding alleged emotional distress damages. Whether she failed to timely produce certain information affects no one beyond the present litigants, and the pertinent facts were fully and correctly reviewed by the Court of Appeals. Moreover, Petitioner waived any argument that the District Court applied the wrong legal standard, because she expressly told that court it should apply the very same four factor test to which she now objects.

CONCLUSION

The Petition for a Writ Of Certiorari should be denied.

Respectfully submitted,

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